



EMERGENCY RULE CONCERNING NPDES PESTICIDE GENERAL PERMITS

Overview

Temporarily adds provisions for national pollutant discharge elimination system (NPDES) general permits for discharges of aquatic pesticides to waters of the state as required under 40 CFR 122.

Citations Affected

Non-code.

Affected Persons

Approximately 200 federal, state and local agencies, 2065 pesticide applicators, 186 utilities, 46 railroads and a small number of other entities will be potentially affected if they apply pesticides to or over the water in a use pattern covered by the permit. We do not expect more than 100 of these entities to be required to take any specific action under this permit.

Reason or Reasons for the Emergency Rule

This rule is required under section 402 of the Clean Water Act as implemented in 40 CFR 123.

Economic Impact of the Rule

The administrative requirements of the general permit issued under this rule will result in potential costs to regulated entities of up to \$50,000, depending on the specific provisions of the general permit issued under this emergency rule. The permit coverage against citizen suits under the Clean Water Act will potentially save covered entities significantly more in penalties and legal costs. However, none of these costs and benefits can be meaningfully quantified at this time.

Benefits of the Rule

This rule temporarily authorizes the commissioner of IDEM to issue National Pollutant Discharge Elimination System (NPDES) general permits for discharges of aquatic pesticides to waters of the state as required under section 402 of the Clean Water Act (CWA) (Federal Water Pollution Control Act, 33 U.S.C. 1342) and 40 CFR 122 ("EPA Administered Permit Programs: The National Pollutant Discharge Elimination System"). This action responds to the decision of the Sixth Circuit Court of Appeals in *National Cotton Council et al. v. EPA*, 553 F.3d 927 requiring NPDES permits for point source discharges of pesticides to waters of the United States.

Description of the Rulemaking Project

This emergency rule authorizes the commissioner to issue NPDES general permits for application of pesticides to or over water.

Scheduled Hearings

Water Pollution Control Board: February 9, 2011

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as appropriate.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Emergency Rulemaking Process

Emergency rules under IC 4-22-2-37.1 take effect on the latest of the following dates:

- (1) The effective date of the statute delegating authority to the agency to adopt the rule.
- (2) The date and time that the rule is accepted filing by the Publisher.
- (3) The effective date stated by the adopting agency in the rule.
- (4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

An emergency rule expires not later than ninety (90) days after the rule is accepted for filing by the Publisher. An emergency rule may be extended for two (2) extension periods.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Steve Mojonier, Rules Development Branch, Office of Legal Counsel, (317) 233-1655 or (800) 451-6027 (in Indiana).